

### REMARKS

Upon entry of the foregoing amendment, claims 41-66 are pending in the application, with 41, 48, 53, and 57 being the independent claims. Claims 1-40 and 67-70 have been canceled without prejudice or disclaimer. Claims 53, 54, 56, and 57 have been amended to correct obvious typographical errors. These changes are believed to introduce no new matter, and their entry is respectfully requested.

### ELECTION OF CLAIMS

In the Office Action, the pending claims 1-70 have been restricted as set forth below.

Group I: Claims 1-30 and 67-70, drawn to an isolated nucleic acid active as an FSH $\beta$  locus control region wherein the locus control region is SEQ ID NO:1 or a sequence 80% related.

Group II: Claims 31-40, drawn to a transgenic non-human animal comprising the lcr of Group I and methods of making the transgenic.

Group III: Claims 41-47, drawn to a recombinant nucleic acid comprising FSH $\beta$  operatively associated with a response element.

Group IV: Claims 48-66, drawn to a transgenic non-human animal comprising the construct of Group II and methods of making the transgenic and a method of using the transgenic.

Applicants provisionally elect Group IV (claims 48-66) with traverse.

The Examiner states that unity of invention exists if there is evidence which would lead one to conclude that the characteristic of the final product is due to the intermediate. (Office Action, page 3). The transgenic animal of Group IV produces greater levels of FSH $\beta$  and greater numbers of gametes. This phenotype is the direct result of insertion into the genome of the animal of the recombinant nucleic acid encoding FSH $\beta$  of Group III. Contrary to the Examiner's

opinion, one would clearly conclude that the characteristic of the final product (the transgenic animal overexpressing FSH $\beta$  and overproducing gametes) is due to the presence in the animal of the intermediate (the nucleic acid designed to overexpress FSH $\beta$ ).

Moreover, according to PCT Rule 13.2, unity of invention shall be considered to be present in the context of intermediate and final products where the following two conditions are fulfilled:

(A) the intermediate and final products have the same essential structural element, in that:

(1) the basic chemical structures of the intermediate and the final products are the same, or

(2) the chemical structures of the two products are technically closely interrelated, the intermediate incorporating an essential structural element into the final product; and

(B) the intermediate and final products are technically interrelated, this meaning that the final product is manufactured directly from the intermediate or is separated from it by a small number of intermediates all containing the same essential structural element. (See M.P.E.P. 1850.III.C). Here, the recombinant nucleic acid and the transgenic animal have the same essential structural element as the nucleic acid is present in the transgenic animal, thereby meeting condition A. Further, the transgenic animal is manufactured directly from the recombinant nucleic acid, meeting condition B. Thus, the claims of Groups III and IV meet the conditions for unity of invention.

Applicants assert that the claims of Group III and Group IV have unity of invention and respectfully request that the two Groups be examined together.

The Examiner is encouraged to contact the undersigned directly if such contact will expedite the examination and allowance of the pending claims.

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Page 9 of 9

The Commissioner is hereby authorized to charge any deficiency or credit any overpayment to  
Deposit Account No. 50-0220.

Respectfully submitted,



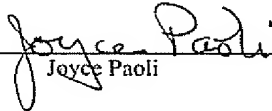
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**CERTIFICATION OF TRANSMISSION**

I hereby certify that this correspondence is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4) to the U.S. Patent and Trademark Office on March 6, 2008.

Signature: \_\_\_\_\_

  
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